THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.22879 of 2006

Date: 02nd January 2007

Between:
K.Sudarshan Rao, s/o late Lakshman Rao,
Aged 55 years, Occ: business, r/o 5-98,
Luxettipeta (v) & (M), Adilabad District.

... Petitioner.

And

1. The Gram Panchayat, Luxettipeta,
   rep. by its Secretary Luxettipeta,
   Adilabad District and another.

... Respondents.

* * *

ORDER:

This Court ordered notice before admission on 06.12.2006 and *status quo* was granted for a limited period. Counter-affidavit is filed by R-1.

2. Heard Sri V.Jithender Rao, learned counsel representing the writ petitioner and Sri R.Prem Sagar, learned counsel representing the first respondent and learned Assistant Government Pleader for Panchayat Raj, representing R-2.

3. The writ petition is filed for a writ of Mandamus declaring action of the first respondent in digging and constructing drainage canal in petitioner's house plot bearing H.No.5-98, situated at

Mandal Office Road, Luxettipet village and mandal of Adilabad District, as illegal, arbitrary and also against the A.P. Panchayat Raj Act, 1994; and consequently direct the respondents not to dig and construct drainage canal in petitioner's house stated supra and pass such other suitable orders.

4. It is stated that the petitioner had purchased the subject property in the year 1993 and constructed a residential building duly obtaining necessary permission from the first respondent. It is also stated that the petitioner had left 18 feet in front of his building and ever since the construction, the petitioner is residing therein by paying taxes to the first respondent. While so, about two months back the first respondent started digging for constructing drainage canal in their street and the first respondent illegally started digging the said drainage canal by encroaching 8 feet into petitioner's plot which the petitioner left in front of his house. It is also stated that on the opposite side of his house there is encroachment of government land and they have also constructed compound walls on to the road and the petitioner brought the same to the notice of the respondents and requested them to remove the said encroachments and to take up the drainage canal work on the other side of the road. But the first respondent only to facilitate them neglecting his request forcefully started digging the land of the petitioner. It is also stated that the first respondent had not considered the request of the petitioner and hence, the petitioner was forced to make representations dated 29.10.2006 and 20.11.2006 to the second respondent as well as the District Collector and other officials about the illegal action

of the first respondent, but none had taken any action. Certain other factual details also had been narrated in the affidavit filed in support of the writ petition.

5. In the counter-affidavit filed by the first respondent it is stated that some works were sanctioned to this Gram Panchayat under Sampoorna Grameena Rojgar Yojana Scheme (SGRY). It is also stated that on 05.10.2006 the Gram Panchayat passed a resolution to construct a drainage from the house of Sri Rudhra Rajesham to the house of Gunda Satyanarayana with an estimated cost of Rs.1 lakh with a length of 300 metres, depth of 3 feet and width of 2 ½ feet and the work was started in the month of October 2006 and completed except part in front of the house of the writ petitioner. It is also stated that while the workers were digging for the purpose of drainage in front of the petitioner's house in the last week of October 2006, he obstructed the work and claimed that the drainage was constructing by encroaching 8 feet of his land. In fact the Gram Panchayat was constructing the drainage without touching the site of the writ petitioner. There is 8 feet more site of the Gram Panchayat in between drainage and the house boundary of the writ petitioner. Further it is stated that it is not true that the petitioner had purchased the subject matter of the property in the year 1993 and constructed residential building duly obtaining all necessary permissions from the Gram Panchayat. The mother of the petitioner Smt.K.Kanthamma executed a partition deed in favour of the writ petitioner and the brother of the writ petitioner K.Hari Prasad Rao and as per the said partition deed the petitioner got 4 guntas of land in survey No.272 of Luxettipeta village. Since

the writ petitioner started construction of the building in the month of November 1995 without obtaining valid permission from the Gram Panchayat, immediately the Gram Panchayat issued a notice to the mother of the writ petitioner to stop the illegal construction, otherwise action would be taken against her as per the provisions of the A.P. Panchayat Raj Act, 1994. Then the writ petitioner and his mother made an application to the Gram Panchayat on 14.11.1995 to grant permission for construction of the building along with the xerox copy of the sale deed, partition deed dated 20.7.1995 and the plans of the building. The Gram Panchayat issued a public notice inviting any objections for the construction of this building. One Sri Durgaiah, Bandi Kistaiah, A.Shankaraiah, Gunda Swamy, Poshaiah, Tippali Lingaiah and Kandula Surya Rao, who were residing in the flats behind the writ petitioner's building made complaint to the Gram Panchayat on 18.12.1995 that the writ petitioner encroached the road and proceeded with the construction without leaving passage to them to reach the main road and requested to stop the construction of the writ petitioner and do justice and the Gram Panchayat conducted spot inspection and directed the writ petitioner to leave 13 feet of the west side of the site and proceed with the construction. It is also stated that as per the plan submitted by the writ petitioner he had shown 66 feet wide road on southern side which leads to MRO Office, but the writ petitioner did not file any material paper along with this writ petition i.e., copy of the application, sanctioned plan and link documents to establish right over the property. As per the material paper filed by the first

respondent along with the counter-affidavit it clearly shows that there is 66 feet wide road on southern side of his site. It is also stated that the writ petitioner encroached nearly 300 feet of the road towards his west side and constructed balcony in the first floor. The first respondent Gram Panchayat passed a resolution on 05.10.2006 to construct the drainage on the opposite side of the writ petitioner i.e., other side of the road from the house of Ch.Nagabushanam to R & B inspection bungalow with an estimated cost of Rs.1 lakh and the first respondent will start work immediately after sanctioning of funds and construct the drainage by leaving 60 feet road.

6. It is also further stated in paragraph 4 that the respondent Gram Panchayat is constructing the drainage on the road side and within the area of the road and it is false to state that the Gram Panchayat is encroaching the writ petitioner's land and in fact the writ petitioner himself encroached the government land on southern side and western side and made illegal construction by violating rules and regulations as per the A.P. Panchayat Raj Act, 1994. It is also stated that it is not true that the respondent Gram Panchayat is carrying out the said construction work of drainage in a hurried manner and in fact a new body of Gram Panchayat had taken charge in the month of August 2006 and started all developmental works with available funds by following procedure and started this work in the month of October 2006 and completed the entire 300 metres of the drainage except this 36 feet which is in front of the writ petitioner's house. In view of the *status quo* order granted by this court, the first respondent could not complete

the drainage and the drain is over flowing and the residents were facing hardship due to mosquitoes and accumulation of slit. There is no other way to drive the drain except the constructed channel.

7. In the light of the respective stands taken by the parties there appears a controversy. Whether the writ petitioner in fact is the owner of the property in question or a portion thereof had been encroached by the writ petitioner, it is needless to say that predominantly it is a question of fact. This Court is not inclined to express any opinion relating to the said aspect, but however inasmuch as in the light of the specific stand taken by the writ petitioner, the respondents are bound to follow the procedure as contemplated under the A.P. Panchayat Raj Act and the Rules framed thereunder in relation to these encroachments or otherwise.

8. The writ petition is disposed of directing the respondents to follow due process of law in this regard and till then the *status quo* to be maintained. It is needless to say that if it is an encroached portion, the respondents are at liberty to proceed with in accordance with law and it is also further needless to say that if the petitioner is the owner of the land the respondents are bound to pay compensation by following the procedure.

9. With the above directions, the writ petition is disposed of accordingly. No order as to costs.

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(P.S.NARAYANA, J.)

Date: January 02, 2007.

Note:

Issue CC by four days.

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BSB